

Department of Energy

§ 1040.34

be required to undertake additional recruitment efforts for one sex as remedial action under § 1040.7(a) and may choose to undertake these efforts as affirmative action under § 1040.7(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 1040.31, 1040.32, and 1040.33 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities which admit as students only or predominantly members of one sex, if these actions have the effect of discriminating on the basis of sex in violation of §§ 1040.31, 1040.32, and 1040.33.

§ 1040.34 Education programs and activities.

(a) *General.* Except as provided elsewhere in this subpart, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of—

(1) A recipient to which §§ 1040.31, 1040.32, and 1040.33 do not apply; or

(2) An entity, not a recipient, to which §§ 1040.31, 1040.32, and 1040.33 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 1040.34 through 1040.45, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether the person satisfies any requirement or condition for the provision of the aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution. A recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which are restricted to members of one sex must provide, or otherwise make available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.*

(1) This paragraph applies to recipients which require participation by any applicant or student in any education program or activity not operated wholly by the recipient, or which facilitates, permits, or considers participation in educational consortia and cooperative employment and student-teaching assignments.

(2) The recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of the recipient which this subpart would prohibit the recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider participation if such action occurs.

§ 1040.35 Housing.

(a) *General.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by the recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take reasonable action as may be necessary to assure itself that housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(i) Proportionate in quantity; and

(ii) Comparable in quality and cost to the student. A recipient may render this assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

§ 1040.36 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for students of one sex are to be comparable to the facilities provided for students of the other sex.

§ 1040.37 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its

education program or activity separately on the basis of sex, or require or refuse participation by any of its students on that basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports, the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have that effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

§ 1040.38 Access to schools operated by LEAs.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by the recipient; or

(b) Any other school or educational unit operated by the recipient, unless the recipient otherwise makes available to a person, under the same policies and criteria of admission, courses, services, and facilities comparable to